IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.482 OF 2004

Surendra Shivaji Salunkhe & Anr. ...Appellants
Vs.
Shivaji Ramu Salunkhe & Ors. ...Respondents

Shri D.S. Sawant for the Appellants.
Shri P.D. Dalvi for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : JULY 26, 2006.

P.C.:

1. Heard Shri Sawant appearing for the Appellants-original Plaintiffs. He submitted that the burden to establish legal necessity was on the original Defendant No.2 who is the purchaser. He submitted that the Appellate Court has accepted the existence of legal necessity only on the basis of the recitals in the Sale Deed and therefore it is obvious that the original Defendant No.2 has not discharged the burden.

2. I have considered the submissions. Apart from recitals in the Sale Deed, the lower Appellate Court has referred to the evidence which shows that the Defendant No.1 had borrowed an amount from Sangli Bank Ltd. and Bank had issued notice. The lower Appellate

Court has observed that the Defendant No.1 performed marriage of his daughter and had spend some amount for marriage. The lower Appellate Court has relied upon evidence of witness No.2 examined by the Appellants who admitted that in the year 1991 the financial position of the Defendant No.1 was critical due to loan taken by him and due to marriage expenditure incurred by him.

3. There is a finding of fact recorded by the first Appellate Court regarding existence of legal necessity. The said finding is based on appreciation of oral and documentary evidence on record. There is no perversity. No substantial questions of law arise.

Second Appeal is dismissed. No orders as to costs.

JUDGE